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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/639,618	08/13/2003	Michael D. Mayfield	22870.00	7411

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EXAMINER

MAYES, DIONNE WALLS

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/639,618

Applicant(s)

MAYFIELD ET AL.

Examiner

Dionne Walls Mayes

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,10,13,14,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1,3-6,10,13,14,19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 3, 2005 has been entered.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 3-6, 10, 13-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended claim 1 to recite at least one "unobstructed" aperture in the dome-shaped cover, but Applicant has not indicated what it means by this term and such term is not further defined in the instant specification. Therefore, it does not appear that Applicant has support in the Specification for such language. Removal of the term "unobstructed" from the claim is requested.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-6, 10, 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luedecke (US. Pat. No. 6,186,355) in view of Kesinger (US. Pat. No. 3,802,560).

Luedecke discloses a collection device for smoking debris, which, according to the Figure 1A embodiment, has almost all of the features that are claimed (i.e. a cover (13') defining what appears to be an unobstructed aperture (15) which appears to be of the claimed diameter, wherein the cover hides cigarette butts from view; a lower section (8); a hinge (47) connecting the cover to the lower section; a tray/trashcan/inner lining (21) disposed beneath the cover to hold cigarette butts). Luedecke may not specifically state that there is a lock attached to the cover and the lower section, or that such a lock is a padlock or a recessed lock. However, this limitation is not deemed to patentably distinguish the claims from the Luedecke reference since it would have been obvious to one having ordinary skill in the art at the time of the invention to include a locking means, such as a conventional padlock, to prevent the cans (3) which are disposed in the refuse box from being accessed by the public. Further, while Luedecke may not state that the cover 13' is domed-shaped, this limitation in the claims is not deemed to patentably distinguish it from the reference as one having ordinary skill in the art would

Art Unit: 1731

have obviously considered making the cover "dome shaped" based on design choice as it is well known that many devices for collecting smoking debris have dome-shaped covers. While Luedecke may not teach a nonflammable material at least partially filling the tray/trashcan/liner, it would have been obvious to one having ordinary skill in the art at the time of the invention to have added a nonflammable material, such as sand, to the tray since, as explained in Kesinger et al, ash trays of the sand receptacle type are widely used because sand advantageously snuffs out cigar/cigarette butts almost immediately upon contact (see col. 1, lines 10-13).

Regarding claims 13-14, it would have been obvious to one having ordinary skill in the art at the time of the invention to attached the lower section to the trash can (21) with, for example, a chain or other securing means, so that said can will not be displaced when the refuse box is moved or transported to other locations.

#### ***Allowable Subject Matter***

6. Claims 19-20 are allowed. The reasons for allowance are that it would not have been obvious to modify the prior art of record to include in an ashtray (with a cylinder-shaped vessel) a lining defining a cavity at least partly filled with a bottom layer of immobile material and an upper layer of a nonflammable material.

#### ***Response to Arguments***

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- De Boer, Carter et al, and Sheppard

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Walls Mayes whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Dionne Walls Mayes  
Primary Examiner  
Art Unit 1731

October 6, 2005